

**STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD
3310 EL CAMINO AVENUE, RM. 151 (JOC)
SACRAMENTO, CA 95821**

**DIVISION 1, CHAPTER 1, ARTICLE 2, OF THE
CALIFORNIA CODE OF REGULATIONS
REGARDING GENERAL CLEANUP**

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 2, Section 4, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 2. Definitions and Delegations**

§ 4. Definitions.

(p) ~~General Manager.~~ Executive Officer. ~~“General Manager”~~ “Executive Officer” means the person appointed by the board pursuant to Water Code section 8581 for that purpose.

NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 8361, 8370, 8521, 8581, 8608, 8630 and 8710, Water Code.

Need for changes: Executive Officer change not caught in Tier 1.

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SACRAMENTO, CA 95821**

**DIVISION 1, CHAPTER 1, ARTICLE 3, OF THE
CALIFORNIA CODE OF REGULATIONS
REGARDING GENERAL CLEANUP**

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 3, Sections 9, 10, 11, 12, 13, 14, 16 and 17 to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 3. Application Procedures**

§ 9. Acknowledgement of Receipt, Completeness of Applications, and Notice to Contiguous Landowners.

- (a) The board shall acknowledge receipt of all applications in writing within ten (10) working days of receipt.
- (b) The board shall send a notice of the pending application and its content to each adjacent landowner identified by the applicant within ~~ten (10) working~~ thirty (30) calendar days of receipt of the application.
- (c) Within thirty (30) calendar days of receipt of an application, the board shall determine whether the application is complete and notify the applicant, or the applicant's agent, of its determination and any need for additional information.

(d) Applications shall be deemed received and complete either when the applicant supplies the requested additional information or, if no additional information is requested, thirty (30) calendar days after the receipt of the application by the board.

Need for changes: The adjacent landowner notices should not go out until the application is deemed complete. Applications may be returned by staff to the applicant within the first 10 working days and changes to the list of adjacent landowners may occur.

§ 10. Environmental Review.

(a) Each application shall be evaluated by an environmental review committee appointed by the ~~General Manager~~, Executive Officer, to review the environmental aspects of the application and to make recommendations with respect to compliance with the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA") and the CEQA Guidelines, Title 14, California Code of Regulations, section 15000 et seq. The recommendations may include proposals for mitigation to avoid significant effects on the environment.

NOTE: Authority cited: Section 21082, Public Resources Code; and Section 8571, Water Code. Reference: Sections 21082 and 21089, Public Resources Code; and Sections 8608 and 8710, Water Code.

Need for changes: Executive Officer change not caught in Tier 1.

§ 11. Variances.

(a) An application for an encroachment permit for a use that is not consistent with the board's standards as outlined ~~in this division~~ in Article 8 requires a variance approved by the board.

(b) When approval of an encroachment requires a variance, the applicant must clearly state in the application why compliance with the board's standards is infeasible or not appropriate.

(c) The ~~General Manager~~ Executive Officer may grant temporary variances to allow work during the flood season (See Table 8.1).

(d) Where the ~~General Manager~~ Executive Officer finds in a particular situation that there is no legitimate reason for the application of one of the board's standards, the ~~General Manager~~ Executive Officer may waive any such standard for that situation.

NOTE: Authority cited: Section 8571, Water Code. Reference: Section 8710, Water Code.

Need for changes: Executive Officer change not caught in Tier 1. Variances may only be requested to the Standards in Article 8 and not the entire body of Title 23.

§ 12. Protests.

Protests to permit applications may be submitted by any interested party. For the purpose of the section, the term “interested party” means a party who has a legally recognizable private or public interest. Protests must be submitted in writing. Each protest must include:

- (1) The name, address, and telephone number of the protestant;
 - (2) A clear statement of the protestant’s objections; and
 - (3) An explanation of how the protestant will be adversely affected by the proposed project.
- Within ten (10) [calendar](#) days of receipt of a protest, the board shall mail a copy of the protest to the applicant. Protests must be based solely upon flood control concerns or, where the board is acting as lead agency under CEQA, environmental concerns.

NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 8571 and 8710, Water Code; and Section 21092, Public Resources Code.

[Need for changes:](#) Need to clarify calendar or working days.

§ 13. Evidentiary Hearings.

(a) [Except where approval of permits has been delegated to the Executive Officer pursuant to section 5,](#) ~~A~~an evidentiary hearing shall be held for any matter that requires the issuance of a permit.

(f) If the President designates a hearing officer, the hearing officer shall draft proposed findings and a proposed decision. The proposed findings and proposed decision, along with any evidence admitted at the hearing, shall be transmitted to the board as soon as reasonably possible following the hearing. The board shall consider the hearing officer’s proposed findings and proposed decision at the next available board meeting following the hearing officer’s proposed decision. The decision on the matter shall not become final until the board approves or rejects the hearing officer’s proposed decision. The board’s review of the hearing officer’s proposed decision does not re-open the hearing and no new evidence shall be submitted unless allowed by the President.

(g) Written notice of the hearing shall be provided to the applicant at least ten (10) [calendar](#) days prior to the date of the hearing. The notice shall include the following:

- (1) The name and number assigned to the application, if any;
- (2) A description of the application and its proposed location;
- (3) The date, time, and place at which the hearing will be held;

(4) A statement that the hearing will be governed by this Article, and that a copy of the governing procedures will be provided to the applicant upon request;

(5) A statement that Chapter 5 of the Administrative Procedure Act (commencing with section 11500) shall not apply to the proceeding; and

(6) A statement that if the applicant or any of the applicant's witnesses do not proficiently speak or understand English, the applicant may request language assistance by contacting the board and making such request within a reasonable amount of time prior to the hearing to allow appropriate arrangements to be made. The President or appointed hearing officer may direct the applicant to pay for the cost of the interpreter based upon an equitable consideration of all the circumstances of each case, such as the ability of the party in need of the interpreter to pay.

(h) Applicants shall be notified of the staff recommendations on the application at least seven (7) [calendar](#) days prior to the hearing, unless this period is waived by the applicant. Adjacent landowners shall also be notified of staff recommendations at least seven (7) [calendar](#) days prior to the hearing if they have responded in writing to the notice sent pursuant to section 9(b) of this article. Protestants shall be notified of the staff recommendations at least seven (7) [calendar](#) days prior to the hearing.

NOTE: Authority cited: Section 8571, Water Code; and Section 11400.20, Government Code.
Reference: Sections 6253, 11125 and 11425.10, Government Code; and Sections 8710, 8730.2, 8731, 8732, 8732.5, 8734 and 8735, Water Code.

[Need for changes: Need to clarify calendar or working days. Amendment made to subsection \(a\) to reflect new law in AB 1165 that allows the Executive Officer to approve permits without a hearing under certain circumstances. Typographical correction to subsection \(f\).](#)

§ 14. Board Decision.

(a) The board shall act upon applications within the following time limits:

(1) When the board is the lead agency pursuant to CEQA and an environmental impact report is prepared, it shall approve or disapprove a project within six months from the date of the certification of the environmental impact report.

(2) When the board is the lead agency and a negative declaration is adopted or if the project is exempt from CEQA, the board shall approve or disapprove a project within three months from the date of the adoption of the negative declaration.

(3) When the board is a responsible agency for a project that has been approved by the lead agency, it shall either approve or disapprove the project within whichever is the longer:

(A) Within one–hundred–eighty (180) [calendar](#) days of the date on which the lead agency has approved the project; or

(B) Within one–hundred–eighty (180) [calendar](#) days of the date on which the application is deemed complete.

(b) Applicants may waive the requirement that applications be acted upon within such periods. Waivers must be in writing or expressed on the record at a hearing.

NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 65950 and 65952, Government Code; and Section 8730.1, Water Code.

[Need for changes:](#) Need to clarify calendar or working days.

§ 16. Permit Conditions.

(m) If any of the work does not conform to the conditions of the permit, the permittee, upon the order of the ~~General Manager~~ [Executive Officer](#) or Chief Engineer, shall, in the manner prescribed, be responsible for the cost and expense to remove, alter, relocate, or reconstruct all or any part of the work.

NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 21002, 21081 and 21081.6, Public Resources Code; Sections 8608 and 8710, Water Code; Title 33, Code of Federal Regulations, Section 208.10.

[Need for changes:](#) Executive Officer change not caught in Tier 1.

§ 17. Emergencies.

(a) Any existing levee, conforming existing encroachment, or permitted encroachment may be protected or strengthened in case of emergency during flood season, as specified in section 112, where there is imminent danger of injury to persons, loss of life, or destruction of property.

(b) Any person conducting emergency work shall immediately notify the local maintaining agency and the board through the ~~General Manager~~ [Executive Officer](#) or Chief Engineer.

(c) For the purpose of this section, the term “emergency” includes any lawfully declared emergency, or any circumstance determined to be an emergency by the ~~General Manager~~ [Executive Officer](#) or Chief Engineer.

(d) In an emergency, the ~~General Manager~~ Executive Officer may issue a temporary permit. A completed application with proper plans, cross sections, completed environmental assessment questionnaire, and any other necessary information required by section 8 of this article must be submitted to the board within thirty (30) calendar days following the date of the commencement of emergency work.

(e) All emergency work is subject to subsequent approval of the board, and the board may require its removal or alteration if not approved.

(f) The board or the ~~General Manager~~ Executive Officer may impose reasonable conditions, pursuant to section 16, on its approval of any emergency work.

NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 8715, 8716, 8717 and 8718, Water Code.

Need for changes: Executive Officer change not caught in Tier 1. Need to clarify calendar or working days.

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**DIVISION 1, CHAPTER 1, ARTICLE 5, OF THE
CALIFORNIA CODE OF REGULATIONS
REGARDING GENERAL CLEANUP**

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 5, Section 103 to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 5. Designated Floodways**

§ 103. Notices and Hearings.

The board shall notify local interested parties, thirty (30) [calendar](#) days prior to any hearing or hearings on designated floodways and floodway encroachment lines, by notice published at least twice in a newspaper of general circulation in the affected area. Hearings must be held in areas convenient to the majority of interested parties. The board shall hold one hearing prior to initiation of the study and at least one hearing after the study has been completed but prior to adoption.

NOTE: Authority cited: Section 8571, Water Code. Reference: Section 8609, Water Code.

[Need for changes:](#) Need to clarify calendar or working days.

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**DIVISION 1, CHAPTER 1, ARTICLE 7, OF THE
CALIFORNIA CODE OF REGULATIONS
REGARDING GENERAL CLEANUP**

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 7, Section 110 to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 7. Review Rights**

§ 110. Review Procedures.

A person or public agency adversely affected by a decision described in section 109 is entitled to board review at a regularly scheduled meeting of the board after receipt of a written request [protest](#) directed to the ~~General Manager~~ [Executive Officer](#) of the board stating the facts and circumstances upon which the request is based, provided the request complies with the requirements of section 12. If a ~~petition for reconsideration~~ [written protest](#) is not submitted within ~~the time limits specified in section 23~~ [thirty \(30\) calendar days of the Executive Officer's decision](#), the decision ~~of the board~~ is final.

NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 8609 and 8710, Water Code.

[Need for changes:](#) Executive Officer change not caught in Tier 1. Amendments are necessary to reflect that section 23 (reconsideration) has been deleted.

**STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD
3310 EL CAMINO AVENUE, RM. 151 (JOC)
SACRAMENTO, CA 95821**

**DIVISION 1, CHAPTER 1, ARTICLE 8, OF THE
CALIFORNIA CODE OF REGULATIONS
REGARDING GENERAL CLEANUP**

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 8, Section 123 to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 8. Standards**

§ 123. Pipelines, Conduits, and Utility Lines.

(b) Pipelines, conduits, utility lines, and appurtenant structures must conform to the following criteria:

(1) Pipelines, conduits, utility lines, utility poles, and appurtenant structures may not be installed within the levee section, within ten (10) feet of levee toes, or within the floodway during the flood season unless authorized by the ~~General Manager~~ Executive Officer based on reservoir levels, stream levels, and forecasted weather conditions on a case-by-case basis, pursuant to section 11.

NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 8608, 8710 and 8712, Water Code.

Need for changes: Executive Officer change not caught in Tier 1.

**STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD
3310 EL CAMINO AVENUE, RM. 151 (JOC)
SACRAMENTO, CA 95821**

**DIVISION 1, CHAPTER 1, ARTICLE 10, OF THE
CALIFORNIA CODE OF REGULATIONS
REGARDING GENERAL CLEANUP**

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 10, Appendix A to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 10. Appendix A**

Acceptance of a Permit

You must notify the Department of Water Resources ten [\(10\) working](#) days before construction begins by mailing the pre-addressed start card furnished by the Board when the permit is issued. This card will contain the current address and telephone number of the Department of Water Resources' Flood Project Inspection Section which provides inspection services on behalf of the Board. The beginning of any work described in the permit constitutes acceptance by the applicant that work will be done in compliance with the general and special conditions listed in the permit. Inquiries about procedures or other details may be made in person or by correspondence to The Central Valley Flood Protection Board, Attention: Floodway Protection Section, 3310 El Camino Avenue, Room ~~LL40~~ [151](#), Sacramento, California 95821; by FAX at (916) 574-0682; or by calling (916) 574-0609. Please include the Board's application number when inquiring about an application.

[Need for changes:](#) Need to clarify calendar or working days, and correct the Board's address.

Sample Permit

SIX: This permit shall remain in effect until revoked. In the event any conditions in this permit are not complied with, it may be revoked on fifteen (15) calendar days' notice.

~~TWENTY: The permittee shall notify the Department of Water Resources by telephone, (916) 574-1213, at least ten working days prior to start of work.~~

Need for changes: Need to clarify calendar or working days on condition SIX. Condition TWENTY is now included as a SPECIAL CONDITION added individually to each permit.